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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

GALICE MINING DISTRICT; IDA LEE
REMAN, Recorder for the Galice Mining
District; KERBY DALE JACKSON, CEO for
Galice Mining District; DELANT CORY
PALMERTON, Vice Executive Officer for
Galice Mining District; and IRVIN LEE
ADKINS, Private Attorney General,

Plaintiffs,

v.

JOHN KITZHABER, Governor; PETER
COURTNEY, Senator; JACKIE
DINGFELDER, Senator; and ALAN BATES,
Senator,

Defendants.

Case No. 6:13-cv-00682-TC

MEMORANDUM IN SUPPORT OF
DEFENDANTS' MOTION TO DISMISS

I. INTRODUCTION

This lawsuit asks this Court to stop state lawmakers from making law. Plaintiffs assert that several bills in the state legislature are unconstitutional. Whether these bills will become law – or what that law would look like – is unknown. Because it is not clear that a law will be

passed at all, let alone one that would affect plaintiffs, the claim is not ripe. Moreover, the Tenth Amendment prevents federal courts from interrupting state legislative proceedings. This Court lacks subject matter jurisdiction to consider these claims, and the case should be dismissed.

II. BACKGROUND

Plaintiffs are mineral miners. (Complaint p. 6, ¶ C). They allege membership in the “Galice Mining District,” which is also a named plaintiff. (*Id.* p. 4, ¶ 2). According to plaintiffs, they “and the locatable mineral miners which they were elected to represent” will face irreparable harm if several pieces of proposed regulatory legislation become law. (Complaint p. 6, C). Defendants are three state senators who have a significant role in the pending legislation, as well as Governor Kitzhaber. (*Id.* p. 4, ¶ A). The bills are currently in the Oregon Senate. (*Id.*).

III. ARGUMENT

A. Standards

A motion to dismiss based on ripeness is raised pursuant to Federal Rule of Civil Procedure 12(b)(1). *Chandler v. State Farm Mut. Auto. Ins. Co.*, 598 F.3d 1115, 1122 (9th Cir.2010) (“Because standing and ripeness pertain to federal courts' subject matter jurisdiction, they are properly raised in a Rule 12(b)(1) motion to dismiss.”). A motion to dismiss based on legislative immunity is properly raised in a Rule 12(b)(6) motion. *See Kaahumanu v. County of Maui*, 315 F.3d 1215 (9th Cir. 2003). Both types of motion, when based on the face of the pleadings, require the court to “accept as true the allegations of the complaint and must construe the complaint in favor of the complaining party.” *United States ex rel. Lujan v. Hughes Aircraft Co.*, 243 F.3d 1181, 1189 (9th Cir. 2001) (citations omitted).

B. Plaintiffs’ case is not ripe.

Plaintiffs ask this court to enjoin a state legislature from creating laws that could violate their federal rights if enforced against them. This request is not ripe. The doctrine of ripeness “prevents[] the courts, through avoidance of premature adjudication, from entangling themselves

in abstract disagreements.” *Abbott Laboratories v. Gardner*, 387 U.S. 136, 148 (1967). The court’s role is “neither to issue advisory opinions nor to declare rights in hypothetical cases, but to adjudicate live cases or controversies consistent with the powers granted the judiciary in Article III of the Constitution.” *Thomas v. Anchorage Equal Rights Com’n*, 220 F.3d 1134 (9th Cir. 2000).

In this case, plaintiffs challenge four bills that have allegedly been introduced in the legislature. (Complaint pp. 7-13, ¶¶ 1, 6, 14, 17). These bills may remain in committee indefinitely, may come up for a vote and be rejected, may pass one house and not the other, or may pass through the legislature but be vetoed by the governor. There are so many contingencies between these bills and the rights of the plaintiffs that any court opinion on the bills would be merely advisory. Because this case rests entirely upon ‘contingent future events that may not occur as anticipated, or indeed may not occur at all,’ it is not ripe for review. *Texas v. United States*, 523 U.S. 296, 300 (1998). Plaintiffs’ case must be dismissed.

C. All defendants are immune.

Plaintiffs have sued lawmakers for making law. All allegations in the complaint relate to the legislators’ introduction or support of various bills in the legislature. Plaintiffs’ effort is flatly prohibited by the doctrine of legislative immunity. Legislators are absolutely immune from civil suit for actions taken in their official lawmaking capacity. *Bogan v. Scott-Harris*, 523 U.S. 44, 48-49, (1998). Government officials are entitled to legislative immunity for their legislative actions, whether those officials are members of the legislative or the executive branch. *Id.* at 54-55 (1998). This immunity extends both to claims for damages and claims for injunctive relief. *Supreme Ct. of Va. v. Consumers Union of the United States, Inc.*, 446 U.S. 719, 732-33 (1980). Plaintiffs’ claims against defendants for exercising their legislative duties are barred.

D. The Tenth Amendment prevents federal intervention in the state legislature

The Tenth Amendment provides that “[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to

the people.” U.S. Const. amend. X. In essence, the Tenth Amendment limits federal power, preventing the federal government from “commandeering” a state's legislative or executive departments. *New York v. United States*, 505 U.S. at 161 (holding Congress may not commandeer the state legislative process by requiring a state legislature to enact a particular kind of law). Plaintiffs ask this Court to intervene in an area reserved to the states – legislating state law. Because the Tenth Amendment does not allow this form of federal intervention, this case must be dismissed.

IV. CONCLUSION

For the foregoing reasons, this Court lacks subject matter jurisdiction over plaintiffs’ case, and all defendants are immune from suit. The complaint must be dismissed.

DATED May 28, 2013.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on May 28, 2013, I served the foregoing MEMORANDUM IN
SUPPORT OF DEFENDANTS' MOTION TO DISMISS upon the parties hereto by the method
indicated below, and addressed to the following:

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